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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION TWO

In re CHARLES S., JR., et al., Persons  
Coming Under the Juvenile Court Law.

B235499

(Los Angeles County  
Super. Ct. No. CK87773)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent.

v.

CHARLES S.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County. Valerie Skeba, Juvenile Court Referee. Affirmed.

Michael A. Salazar, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel for Plaintiff and Respondent.

Charles S. (father) appeals from a judgment declaring his two children, Charles Jr. (Charlie), born in February 1998, and Emily, born in February 2004, dependents of the court pursuant to Welfare & Institutions Code section 360, subdivision (d).<sup>1</sup> Specifically, father contests the jurisdictional finding made pursuant to section 300, subdivision (d), and the dispositional order requiring him to address sexual abuse issues as part of his family reunification.<sup>2</sup> We affirm.

### **CONTENTIONS**

Father contends that substantial evidence did not support the juvenile court's finding that Emily was a person described under section 300, subdivision (d) (the child "has been sexually abused, or there is a substantial risk that the child will be sexually abused"). Father further contends that even if the allegations alleged under section 300, subdivision (d) were true, they do not support a finding that Charlie was at risk of being sexually abused by his father. Finally, father contends that the order requiring father to participate in individual counseling to address sexual abuse should be reversed.

### **STATEMENT OF THE CASE AND FACTS**

Father and Elsa S. (mother), parents of Charlie and Emily, were going through a divorce in February 2011. Mother stated that father had left the home three months earlier for another woman.

#### **1. Initial referral and interviews**

On February 6, 2011, father returned the children to mother's home. Father indicated that he wanted to take Charlie home with him. Charlie refused, and father and Charlie got into an argument. A physical altercation ensued. Mother got involved and father pushed mother. Father then hit Charlie on the face with an "X-Box game box" and slapped him on the face with an open hand. Father also slapped mother and pushed her down a second time. Mother called the police and a paternal uncle for assistance.

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<sup>1</sup> All further statutory references are to the Welfare & Institutions Code unless otherwise indicated.

<sup>2</sup> Father does not contest the jurisdictional findings made pursuant to section 300, subdivision (b).

The police responded to mother's home. Neither Charlie nor mother sustained any injury. Mother refused medical assistance and was given a temporary emergency protective order. Mother had no desire to prosecute so no arrest was made. On March 2, 2011, the Department of Children and Family Services (DCFS) received a referral regarding the February incident.

A children's social worker interviewed mother and the children on March 10, 2011. Mother explained that father became violent when Charlie refused to go with him. Charlie said that he had never been hit by his father before and was surprised when father threw a set of knives at him, none of which hit him. Mother admitted to being a victim of domestic violence on three occasions, none of which the children witnessed. Mother stated that she suspected that father uses marijuana.

Mother explained that although father no longer lived with the family, he would come to mother's home after he got off work at 4:00 a.m. He would sleep and then take the children to school, since mother had to leave for work at 5:00 a.m.

Charlie explained that father wanted to take him and his sister to meet his new partner. Charlie refused to go with his father because he blames his father's new partner for the separation of the family. Father tried to force Charlie into the car and the altercation ensued. Charlie stated that he only had telephone contact with father since then, and that he has a lot of anger towards father's new friend.

Emily was also interviewed. Emily stated that she did not witness her father hit her mother or her brother. She did see her father throw a set of knives at her brother. She yelled "Stop!" and her father said, "Be quiet, you too." Emily became scared and went back to her bedroom. She heard Charlie say "I'm not going with you," and she saw her mother pushing her father away from Charlie and yelling for help in Spanish. Emily stated that she was upset and scared that her father was going to do this again. She explained that when she was five or six years old, father hit her with a belt and left two linear marks on her face and five marks on her legs. Emily stated that she had never seen anyone in her family use drugs, although she saw her mother and father smoke once when she was four years old.

The social workers involved in Emily's interview then asked her if she knew the difference between a good touch and a bad touch. She stated that she did. She knew where her private parts were. The social workers asked Emily if anyone ever touched her on her private parts, and she responded that father sometimes touched her "butt" and she would move his hand to her stomach because she didn't like it. Emily explained that father touched her butt under her clothes, but that it never hurt her. She said it felt "slimy, like a worm, something gross, almost like a caterpillar, under my clothes." She further explained that "it feels like a finger going into my butt, it doesn't feel right." Emily said she had never told anyone. She thought mother would get "creeped out" because mother makes creepy faces when they talk about bugs and caterpillars. Emily also stated that father sometimes stares at her when she is in the shower and she didn't like it. She told her mother, and mother told father not to look at Emily in the shower anymore.

In a later interview on May 6, 2011, mother stated that she did not believe that father would inappropriately touch Emily. Mother never saw any signs of concern in Emily. Emily loves her father, and is very close and affectionate with him. Mother stated that sometimes Emily makes up stories, or repeats things she hears from a friend that are of a sexual nature.

On May 9, 2011, father was interviewed. Father denied ever touching Emily inappropriately. Father stated that he comes to the mother's home at 4:30 a.m. and sleeps in his son's bedroom. Father stated that Charlie usually wakes up Emily in the morning and helps her get ready, although father sometimes brushes her hair.

Father gave a different explanation of the events of February 6, 2011. He said they were discussing the possibility of Charlie moving in with father since Charlie was not doing well in school. The argument escalated and Charlie put a knife to his own throat and stated that he did not want to move in with father and that he was going to kill himself. Mother by that time was pinning father to the wall and did not see Charlie put the knife to his throat. Father went to Charlie and knocked down the set of knives off the kitchen counter and onto the floor. Regarding the "X-Box game," father had indicated

that he was taking away the game since Charlie was not doing well in school. He accidentally dropped the game on the floor.

Father stated that there was no history of domestic violence between him and mother. He admitted that he was a current user of marijuana, and stated that mother knew this.

A social worker assessed the safety of the children, and determined that they should be removed from father. DCFS placed the children with mother, who stated that she can protect the children from father. A paternal aunt was now helping mother transport the children to school.

## **2. Section 300 petition and initial detention**

On May 11, 2011, DCFS filed a section 300 petition alleging the children were persons described by section 300, subdivisions (a), (b), (d), (i), and (j). Specifically, the petition alleged that the children were at risk due to domestic violence, physical abuse, father's marijuana use, and father's sexual abuse of Emily.

Father appeared at the detention hearing on May 11, 2011, and was appointed counsel. The juvenile court appointed separate counsel to represent Charlie and Emily. The court declared father to be the children's presumed father by marriage. The court found a prima facie case for detaining the children from their father under section 300, subdivisions (a), (b), (d), and (j). The court granted father unmonitored visits with Charlie in a public setting and monitored visits with Emily. At father's request, the court ordered DCFS to conduct an interview with Emily on videotape regarding the sexual abuse allegations. The matter was continued for a pretrial resolution conference.

## **3. Jurisdiction/disposition report**

DCFS provided a jurisdiction/disposition report on June 8, 2011. DCFS had reinterviewed Charlie, who stated that the argument with his father on February 6, 2011, had started because Charlie did not finish his homework. After father informed mother that father was taking Charlie home with him, Charlie went into the kitchen and put a knife to his neck, and threatened to kill himself. Father slapped Charlie in an attempt to move the knife away from his neck. Father threw the box of knives on the floor, as well

as a videogame. Charlie denied being hit by father or that father had tried to force him into his car. Charlie denied father had ever hurt him before, but stated that father hit him with a belt once when he was six or seven. Charlie denied ever having observed father hit Emily. He stated that Emily lied a lot, and said he believed Emily was lying about father hitting her with a belt and touching her on her private parts.

Mother's version of the events of February 6, 2011, was similar to Charlie's. Mother also reported that the altercation on that day was the first and only time that father had ever hit her. Mother stated that she had never seen father hit Charlie or Emily with a belt. When the investigator asked mother if she believed Emily was lying, mother stated that she noticed that Emily would sometimes invent "innocent stories."

When the investigator questioned mother about the alleged sexual abuse, mother stated, "I don't believe it, but if she's (child Emily) saying it, then I have to believe it." Mother said Emily had told her in the past that father had massaged her lower back and stomach, but she denied ever witnessing anything inappropriate. Mother also denied knowing father had watched Emily while she showered. Mother said she usually bathed Emily, and that Emily usually bathed herself during the period of time that father lived in the home. Father continued to deny the allegations. When the investigator asked father if he believed Emily was lying, he stated, "Right now, she's doing it. I'm living it. My wife could say the same thing."

Paternal grandmother, a paternal uncle, and a paternal great-aunt were also interviewed. All three denied having any concerns about father acting inappropriately with the children.

DCFS provided the court with the results of Charlie's forensic medical examination. The findings were stated as "Normal exam: can neither confirm nor negate sexual abuse."

#### **4. Emily's forensic interview and medical report**

Emily underwent a forensic medical exam on May 9, 2011. The medical report indicated that Emily reported that father had rubbed her "butt," that she stated she believed father's hand should not be in that area, and that it made her feel uncomfortable.

Emily stated that she put father's hand on her stomach so he could rub her stomach. Emily said her clothes were on when this occurred and she denied ever being touched in her vaginal area. The report concluded that the physical examination was "Normal" and "can neither confirm nor negate sexual abuse."

Emily's forensic interview was conducted on June 9, 2011. Emily denied having stated that father hit her on the face and leg with a belt, or that he had touched her in the "back private part." Emily stated that she had last seen her father on Wednesday and father had given her a hug and a kiss on the cheek. Emily stated that she cried because father took Charlie fishing but would not take her because "the social worker says [father] cannot take me anywhere anymore."

Emily stated that the social workers had told father that Emily reported that he touched her inappropriately. When father mentioned it to Emily, she said "no, no, no, no." Emily reported that since father stopped living at their home, she saw him nine or ten times a week at her aunt's home. Emily explained that when her father touched her, "[h]e wasn't touching my butt, he was touching this, it was like this. And I couldn't say what's this cuz it's like part of my butt . . . I was trying to say this but I don't know what's this called." When asked why her father touched her there, she explained that "I fell on the tree and I got a bump right here and he wanted to feel it." Emily said she was six when that incident occurred.

## **5. Adjudication hearing**

The adjudication commenced on July 18, 2011. The juvenile court received DCFS's reports into evidence.

Emily testified in chambers and was determined to be competent to testify. Emily testified that she was seven years old. She identified her private parts and pointed to each place. She stated that no one had ever touched her on her private parts. She did not remember speaking with a social worker or police officer about anyone touching her on her private parts. Father gave her hugs and kissed her on the cheek. Emily denied that father ever touched her butt, her chest, or her side near her butt. Emily did not remember telling anyone that it sometimes felt like a worm when father touched her.

Emily testified that father touched her on her hip when he carried her, but it did not make her feel uncomfortable. Emily denied that father ever touched her in a way that made her feel uncomfortable. Emily also denied that mother or father told her what to say in court. She stated that she was going to Disneyland on Thursday, but denied that she was told to say something in exchange for the trip to Disneyland.

When questioned by mother's counsel, Emily stated that she did not tell mother everything, but that she would tell her mother if there was an emergency. When asked if she would tell mother if she felt uncomfortable about something, Emily replied "Um, well, maybe." Emily testified that she usually showered by herself.

When cross-examined by father's counsel, Emily testified that father lived with grandmother and she visited with him at grandmother's house. Emily showered by herself, and no one helped her. Neither father nor mother was in the room when she showered. Emily picked out her own clothes and brushed her teeth and hair by herself. Emily enjoyed weekend visits with her father. When she visited father at her aunt's home, father never took her anywhere because father told her he could not take her anywhere. Emily wanted to see father more. Emily acknowledged that father used to live with mother, but stated no one had told her why father no longer lived in the home. Emily testified that her parents got along, they did not fight, and she had never seen them argue. Emily stated that her father never spanked her. Father put her in her room when she misbehaved.

Emily denied that father had ever touched her on her butt. When father's counsel asked her if she thought she may have mistakenly thought father touched her butt, Emily pointed to her left side and said, "Yeah, because I didn't know what this is called; so I mistaked [*sic*] it." Emily said her mother had since told her this area was her hip, not her butt. Emily testified father touched her on her hip when he hugged her, but it did not tickle or feel like a worm or caterpillar when he touched her. Emily could not remember if she had ever said it felt like a worm or caterpillar when her father touched her.

When questioned by county counsel, Emily again testified she did not remember telling a social worker that father had touched her butt, and stated that father never



touched her butt. Later, Emily said she may have said that father had touched her and she did not like it because it felt slimy like a worm or a caterpillar. Emily did remember telling the social worker that she had not told her mother because she was worried it would “creep her out.” Emily did not remember telling the social workers that father watched her take showers. She denied that father did so. Emily did not remember if she had told mother that father watched her take showers, and she did not remember telling mother that father had touched her. When asked if she wanted to make things better for her parents, Emily answered in the affirmative.

One of the social workers who initially interviewed Emily then testified. After the social worker demonstrated where Emily had indicated that father touched her, the court noted, “it’s an area that would be considered, I believe, behind the hip area, on the buttocks area.” When Emily indicated where father touched her, the social worker believed she was referring to her buttocks rather than her hip. The social worker testified that the touching had occurred “today” and “yesterday” and that it had been happening since she was five. The social worker stated that she recalled Emily saying that when father touched her it felt like a finger “in her butt.”

The social worker testified that Emily stated she knew father watched her while she was in the shower because she could see him from the mirror. The social worker saw the shower Emily was referring to, but could not recall whether the shower had a curtain or a sliding glass door. The social worker could not recall if she asked Emily how old she was when this occurred, or whether Emily had seen father looking at her in the shower. When the social worker asked mother about the shower incident, mother appeared shocked and did not know anything about it.

Charlie’s testimony was also taken in chambers. He testified that he had not seen father assist Emily with bathing since she was a baby. Emily never disclosed to Charlie that father had been inappropriate with her or made her feel uncomfortable. Emily got herself ready for school in the mornings.

Closing arguments were submitted in writing. Father’s counsel asked the court to dismiss the petition in its entirety. Emily’s counsel only addressed the sexual abuse

allegations, and argued that Emily's initial disclosure that father had touched her buttocks was more credible than her subsequent statements. In conclusion, Emily's counsel wrote: "There appears to be too many red flags and story variations since the original disclosure that points to 'coaching', therefore, I believe the truth about Emily's disclosure is more in line with the detention rather than the subsequent 'looking at my hip' story."

Charlie's counsel asked the court to sustain the counts in the petition alleging domestic violence and dismiss the counts alleging physical abuse. With respect to the sexual abuse allegations, Charlie's counsel wrote: "Given the multiple and significant discrepancies, it is difficult to assess the credibility of Emily's recantations."

DCFS asked the court to sustain counts b-3 and d-1, alleging domestic violence and sexual abuse.

## **6. The court's findings**

On August 2, 2011, the juvenile court issued its ruling. The court noted that DCFS was asking the court to proceed only with respect to the counts alleging domestic violence and sexual abuse. The court sustained both counts. The court explained that it believed both children's testimony to be rehearsed, and that Emily's forensic interview suggested that someone was influencing her. The court found it suspicious that Emily's entire family was willing to say that she was a liar. The court noted that "the testimony of the children was remarkable for its unbelievability." The court felt that Emily's statements given during her initial interview were detailed and uncoerced. The court specified that "this family has so much interfered with the reliability of most of the investigation of this case, particularly the testimony in chambers, that I think the most reliable statements are the ones in the detention report."

After making its jurisdictional findings, the court proceeded to disposition. The court declared the children dependents of the court, removed them from father's custody, and ordered DCFS to provide mother with family maintenance services and father with family reunification services. The court ordered father to participate in individual counseling to address sexual abuse issues.

On August 4, 2011, father appealed.

## DISCUSSION

On appeal, father challenges the court's finding that Emily and Charlie are persons described under section 300, subdivision (d) (sexual abuse). He also challenges the related dispositional order requiring him to undergo sexual abuse counseling. Father does not challenge the juvenile court's jurisdictional finding made under section 300, subdivision (b).<sup>3</sup>

### I. Jurisdiction is proper

Father contends that the trial court erred in sustaining count d-1 of the section 300 petition.<sup>4</sup> However, father does not challenge dependency jurisdiction based on the allegations sustained under count b-3.

The sustained allegations against father under count b-3 bring Charlie and Emily within the jurisdiction of the juvenile court. As long as there is one unassailable jurisdictional finding, it is immaterial that another might be inappropriate. (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72; *In re Jonathan B.* (1992) 5 Cal.App.4th 873, 875-876 (*Jonathan B.*).

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<sup>3</sup> The sustained allegations under count b-3 read: "On 2/6/11, the children Charlie [S.] and Emily [S.]'s father . . . engaged in a violent altercation with the children's mother . . . in which the children's father repeatedly slapped the mother in the face, pushed the mother to the ground and threatened to physically harm the mother in the presence of the children. On prior occasions, the father physically assaulted the mother. Such violent conduct by the children's father against the mother endangers the children's physical and emotional health and safety and places the children at risk of physical harm, damage and danger."

<sup>4</sup> The sustained allegation under count d-1 read: "On 5/6/11 and on prior occasions, the children Charlie [S.] and Emily [S.]'s father, Charlie [S.] sexually abused the child by fondling the child's bare buttocks and anus. On prior occasions, the father watched the child for an extended period of time while the child bathed. The mother knew or reasonably should have known of the sexual abuse to the child and failed to protect the child. The sexual abuse of the child by the father and the mother's failure to protect the child endangers the child's physical health and safety and places the child and the child's sibling Charlie at risk of physical harm, damage, danger, sexual abuse and failure to protect."

Because father does not challenge the court's other jurisdictional finding, we need not consider father's challenge to the juvenile court's decision to sustain count d-1. As set forth in *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451:

“When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence. [Citations.]”

We will not reverse for error unless it appears reasonably probable that, absent the error, the appellant would have obtained a more favorable result. (*Jonathan B.*, *supra*, 5 Cal.App.4th at p. 876.) Because jurisdiction was proper on other grounds, father cannot expect a more favorable result, and we need not consider his appeal.<sup>5</sup>

## **II. The court did not err in sustaining count d-1**

We need not consider father's arguments as to the propriety of count d-1, since jurisdiction of Charlie and Emily was properly established under section 300, subdivision (b). However, even if we were to consider father's arguments, they would fail.

The court's jurisdictional findings are reviewed for substantial evidence. (*In re Matthew S.* (1996) 41 Cal.App.4th 1311, 1318-1319.) We must determine if substantial evidence supported the juvenile court's determination that “[t]he child has been sexually

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<sup>5</sup> *In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1548, cited by appellant for the proposition that jurisdictional errors should be addressed on appeal regardless of whether they are moot, is distinguishable. In *Joshua C.*, the dependency action had been dismissed after an award of sole physical and legal custody to mother. Despite dismissal of the case, the exercise of jurisdiction had resulted in orders which continued to adversely affect the father. (*Ibid.*) Thus, if the court's exercise of jurisdiction were found to be erroneous, the orders would be invalid. Here, the children continue to be dependents of the court with reunification and family maintenance services being provided. This result would not change if we were to find that substantial evidence did not support the finding of jurisdiction on the single ground challenged by father.

abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code.” (§ 300, subd. (d).)<sup>6</sup> Evidence is substantial if it is reasonable, credible and of solid value. (*In re Veronica G.* (2007) 157 Cal.App.4th 179, 185.) We must examine the entire record, resolve all evidentiary conflicts in favor of the judgment and draw all reasonable inferences in support of the judgment. (*Ibid.*)

***A. Substantial evidence as to Emily***

Emily’s initial allegations were that “my dad touches my butt and I move his hand to my stomach because I don’t like it.” She further stated, “I don’t like it because it feels slimy, like a worm, something gross, almost like a caterpillar, under my clothes.” When asked when this touching occurred, Emily stated, “it happened this morning, and yesterday when we hug in the morning saying [good] morning. I try to get up from bed, and he told me come back lets hug [a] little while.” Emily elaborated, “It doesn’t hurt it just feels smooth, and in back it feels like a finger going in my butt, it doesn’t feel right.” Emily also stated that her father sometimes stared at her for a long time when she took a shower, and that she “didn’t like it.”

The social worker who had initially interviewed Emily believed that these initial statements revealed inappropriate sexual behavior. She testified that she asked Emily if she knew the difference between appropriate and inappropriate touching. Emily was able to identify her private parts. When the social worker asked Emily if she had ever been touched inappropriately, Emily responded by discussing the allegations regarding her father touching her buttocks. Emily indicated that it made her feel uncomfortable. She said the same thing about her father staring at her in the shower. The social worker stated that Emily appeared uncomfortable while talking about the touching and showering, as opposed to the beginning of the interview, when she was talkative and interactive.

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<sup>6</sup> Penal Code section 11165.1, subdivision (b)(4), includes in the definition of “sexual abuse” “[t]he intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification.” Sexual purpose or intent may be inferred from the circumstances. (*In re Mariah T.* (2008) 159 Cal.App.4th 428, 440.)

This constitutes substantial evidence of sexual abuse, as defined in Penal Code section 11165.1, subdivision (b)(4). Although Emily later recanted her testimony, the juvenile court did not find that testimony to be credible. On appeal, we do not reassess the credibility of witnesses. (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1177.)

Father argues that even accepting this evidence, and assuming that father carried out the acts described by Emily, there was no evidence that he did so for the purposes of sexual arousal or gratification, as required by Penal Code section 11165.1. Father points to *People v. Pearson* (1986) 42 Cal.3d 351, 356, where it was noted that a person who commits sodomy does not necessarily have the intent to arouse or gratify sexual desires. For example, the court noted, “sodomy can be committed for wholly sadistic purposes, or by an individual who lacks the capacity to form the required intent.” (*Ibid.*) Father argues that without evidence that father acted for purposes of sexual gratification or arousal, or evidence making an inference of such purposes plausible, this court should not speculate that father intended sexual gratification when he touched Emily’s buttocks or stared at her when she showered.

“To determine whether a defendant acted with sexual intent, all the circumstances are examined.” (*In re R.C.* (2011) 196 Cal.App.4th 741, 750.) Relevant factors include the nature and manner of the touching, the identity of the perpetrator, and the absence of an innocent explanation. (*Ibid.*) Here, sufficient evidence supported the juvenile court’s determination that father had the requisite sexual intent. First of all, the nature of father’s touching clearly made Emily uncomfortable, and she categorized it as inappropriate touching. In addition, father made no effort to offer an innocent explanation for either the act of touching Emily’s buttocks in a way that made her uncomfortable, or staring at her in the shower. Instead, he simply denied these acts. Finally, Emily initially suggested that the touching that made her feel uncomfortable happened regularly: “when we hug in the morning . . . I try to get up from bed, and he told me come back lets hug [a] little while.” Because the juvenile court believed Emily’s initial statements to be credible, and father provided no innocent explanation, sufficient evidence existed from which the juvenile court could properly infer sexual intent.

***B. Substantial evidence as to Charlie***

Father argues that the only victim of father's sexual abuse was Emily, and that there was no evidence that Charlie or any other child to who father had access had been subject to sexual abuse. Furthermore, father argues, Charlie was 13 years old when the abuse occurred, and Emily was seven. Father contends that jurisdiction cannot be based on a "possible [harm] that *could* come to pass" or on harm that is "merely speculative." (*In re David M.* (2005) 134 Cal.App.4th 822, 830.)

Father points out that courts have reached varying conclusions when faced with the issue of whether a finding that one child has been sexually abused can, without more, justify a true finding that a sibling of a different gender is at substantial risk. (See *In re Rubisela E.* (2000) 85 Cal.App.4th 177 (*Rubisela E.*) [three younger brothers of 13-year-old female victim of sexual abuse were not at risk of similar abuse]; *In re Karen R.* (2001) 95 Cal.App.4th 84 [father who forcibly raped his daughter was so sexually aberrant that both male and female siblings of the victim were in substantial danger of sexual abuse if left in the home]; *In re P.A.* (2006) 144 Cal.App.4th 1339 [where father twice inappropriately touched his nine-year-old daughter, two younger boys in the household were at risk because they were approaching the age of the victim]; *In re Maria R.* (2010) 185 Cal.App.4th 48, 68 [parent's abuse of a female child is not, by itself, sufficient to show that sibling is at substantial risk of sexual abuse by that same parent].)

DCFS points out that under Penal Code section 11165.1, subdivision (a), sexual abuse is defined, in part, as conduct in violation of Penal Code section "6. Penal Code section 647.6, subdivision (a)(1) provides that any person "who annoys or molests any child under 18 years of age shall be punished . . . ." A violation of section 647.6 requires conduct motivated by an unnatural or abnormal sexual interest in a child that a normal person would unhesitatingly be irritated or disturbed by. (*People v. Lopez* (1998) 19 Cal.4th 282, 289.) It does not require a touching. (*Ibid.*) Even if Charlie is not at risk of direct sexual abuse or touching by his father, he is at risk of witnessing his father's sexual interest in his sister. Being a witness to such conduct would undoubtedly disturb him.

Indeed, the juvenile court noted that the sexual abuse allegations had “devastated [the] family.”

As set forth in *Rubisela E.*, sibling brothers of a sexually abused female may be at risk simply because of the knowledge that a parent has molested a sibling. “They can even be harmed by the denial of the perpetrator, the spouse’s acquiescence in the denial, or their parents’ efforts to embrace them in a web of denial.” (*Rubisela E.*, *supra*, 85 Cal.App.4th at p. 198.) Here, the juvenile court suggested that Charlie had been coached by his family as to what his testimony should be, noting that it “sounded extremely rehearsed.” The juvenile court believed that Charlie was lying to protect his father, participating in a harmful “web of denial” as described by the *Rubisela E.* court.

The evidence described above is sufficient to show that Charlie was at risk of being irritated or disturbed by his father’s abuse of his sister.<sup>7</sup>

#### **DISPOSITION**

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

\_\_\_\_\_, J.  
CHAVEZ

We concur:

\_\_\_\_\_, Acting P. J.  
DOI TODD

\_\_\_\_\_, J.  
ASHMANN-GERST

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<sup>7</sup> Because we have affirmed the juvenile court’s jurisdictional findings, we need not address father’s argument that the order requiring father to participate in individual counseling to address sexual abuse should be reversed. Under the circumstances, the order was not an abuse of discretion. (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104 [“The juvenile court has broad discretion to determine what would best serve and protect the child’s interest and to fashion a dispositional order in accordance with this discretion”].)